

## **REMARKS/ARGUMENTS**

Applicants have received the Office Action dated June 1, 2010, in which the Examiner: 1) rejected claim 1, 2, and 4-65 under 35 U.S.C. § 112 ¶ 2 as being allegedly indefinite; and 2) rejected claims 1, 2 and 4-65 under 35 U.S.C. § 103(a) as being allegedly anticipated by Moshir (U.S. Pat. Pub. No. 2002/0100036, hereinafter "*Moshir*").

With this paper, Applicants have amended claims 1, 2, 4, 58, 59, and 61 to overcome the rejection under 35 U.S.C § 112, and place the application in better form for consideration on appeal. MPEP § 1206 I. Applicants will appeal the rejections under 35 U.S.C. § 102.

### **I. REJECTIONS UNDER 35 U.S.C. § 112**

The Examiner rejected all pending claims as indefinite based on the recitation "the at least one command" in claim 1. The Examiner contends the recitation "the at least one command" lacks antecedent basis, and that it is unclear whether the recitation "the at least one command" refers to the prior recitation "at least one unsolicited software retrieval command." "Only when a claim remains insolubly ambiguous without a discernible meaning after all reasonable attempts at construction must a court declare it indefinite." MPEP § 2173.02 (quoting *Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings*, 370 F.3d 1354, 1366 (Fed. Cir. 2004)).

Applicants respectfully submit that the recitation "the at least one command" is not insolubly ambiguous, but rather, clearly finds antecedent basis in the only prior recitation of "at least one . . . command," namely the prior recitation "at least one unsolicited software retrieval command." As explained in Robert C. Faber, *Landis on the Mechanics of Claim Drafting* § 3.7 (5th Ed. 2008), "[a]fter any feature is first named completely with all its adjectives in a claim, subsequent mentions of the feature in that claim or in subsequent dependent claims in the claim chain, following the first naming of the element, must use the same noun for that element, but may use fewer than all of the adjectives."

Nevertheless, in order to assuage the Examiner's antecedent basis concern and advance prosecution of the present application, Applicants have amended claims 1, 2, 4, 58, 59, and 61 to recite "the at least one unsolicited software retrieval command." Applicants respectfully request that the rejection under 35 U.S.C. § 112 be withdrawn.

**II. REJECTIONS UNDER 35 U.S.C. § 102(e)**

The rejection of claims 1, 2 and 4-65 under 35 U.S.C. § 102(e) over *Moshir* will be addressed in a forthcoming appeal brief.

**III. CONCLUSION**

Applicants respectfully request entry of these amendments. Applicants will be submitting an Appeal Brief shortly. In the event that an extension of time is necessary to allow for consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims and for time extensions) are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,

/David M. Wilson/

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